

§ 5-104. Preliminary investigation; closed formal hearing.

(A) If the commission determines that a preliminary investigation should be made, the same shall be conducted as provided by Neb. Rev. Stat. § 24-721.

(B) The chairperson may appoint a committee of commission members to conduct a preliminary investigation, and report.

(C) The commission, as a body, may conduct such preliminary investigation. The commission, acting as a body or by a committee of its members, may authorize the employment and use of a non-member investigator.

(D) The judge/justice shall be notified of the investigation, the nature of the complaint or request, and the name of the person making the written statement, if any, or that the investigation is being made on the committee's motion; and that he or she shall be afforded a reasonable opportunity in the course of the preliminary investigation to present such relevant matters as he or she may choose. At that time the judge/justice shall be furnished a copy of these rules.

(E)(1) The commission may take evidence before it or any individual member of the commission or its staff for the purpose of its preliminary investigation. Discovery proceedings may be had at the request of the respondent upon application made to the commission or master and good cause shown.

(2) A judge, clerk, court employee, member of the bar, or other officer of the court, shall comply with a reasonable request made by the commission for aid in its investigation of a judge or justice.

(F) The preliminary investigation shall be conducted without delay, and all progress, final, and supplemental reports shall be promptly filed with the secretary. All such reports shall be considered by the commission in formal session.

(G) If the commission finds that the reported preliminary investigation does not disclose sufficient statutory cause to warrant further investigation or proceedings, the judge/justice and the person, if any, filing the written complaint or request, shall be so notified in writing by the chairperson. Such formal action of the commission in dismissing a complaint or request does not necessarily adopt all the reasoning or conclusions of the investigative report.

(H) If the commission finds from the preliminary investigation that there is probable cause for the judge/justice to be subject to disciplinary action or retirement specified in Neb. Rev. Stat. § 24-722, it shall either:

(1) Reprimand the judge/justice after having held a formal closed hearing; such hearing is to be conducted in the same manner as is a formal open hearing except that the hearing shall be closed and all documents and reports arising out of the hearing shall be confidential, or

(2) Order a formal open hearing to be held concerning the reprimand, discipline, censure,

suspension, removal, or retirement of such judge/justice.

(I) If the preliminary investigation does not disclose sufficient statutory cause to warrant further investigation or proceedings and the matter is dismissed under § 5-104(G) or if a reprimand is issued under § 5-104(H), the evidence on said complaint or complaints shall be considered the same as any other evidence in the event a subsequent formal hearing is held on a complaint concerning the reprimand, discipline, censure, suspension, removal or retirement of such judge/justice.

(J) If a reprimand is issued under § 5-104(H)(1) the commission shall issue a statement outlining the subject and nature of the complaint leading to the reprimand and the date and location of the hearing which was held prior to the issuance of the reprimand.
